PACIFIC OPERATORS OFFSHORE, INC.

IBLA 99-21 Decided December 20, 2000

Appeal from a decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, denying an appeal of a denial of a request for a waiver from the duty to increase the bond on a producing lease. MMS-98-0065-OPS.

Affirmed.

1. Notice: Generally

   One who deals with the Government is presumed to know the relevant statutes and duly promulgated regulations.

2. Oil and Gas Leases: Offshore Lease Bond--Regulations: Interpretation--Statutory Construction: Administrative Construction

   It is within the authority of the Department to interpret its own regulations. An MMS regulatory change increasing the general bonding requirement for Outer Continental Shelf producers to $500,000 will be upheld when the record shows the regulatory change was duly promulgated and the agency provided in the decision record a reasoned analysis for the change and its application to the facts of appellant's case.

APPEARANCES: Charles W. Cappel, Esq., Santa Barbara, California, for Appellant Pacific Operators Offshore, Inc.; Geoffrey Heath, Esq., and Dennis Daugherty, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Pacific Operators Offshore, Inc. (appellant or Pacific Operators) has appealed from a July 16, 1998, decision of the Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), denying Pacific Operators' request for a waiver of its regulatory duty to provide a $500,000 bond on lease Outer Continental Shelf (OCS) P-0166

because Pacific Operators could not satisfy the requirement, pursuant to the regulation at 30 C.F.R. § 256.53(c), that its costs to abandon lease OCS P-0166 would be less than $500,000.

Appellant's Statement of Reasons on Appeal (SOR) makes several arguments. First, the appellant argues that language in the MMS Final Rule on surety bond requirements for Outer Continental Shelf Leases, published May 22, 1997, is ambiguous in identifying the bonding obligations of long-time operators in the following way: while the May 22, 1997, regulation states, in 30 C.F.R. § 256.52, that all lessees must post a $50,000 bond "that guarantees compliance with all the terms and conditions of the lease * * * [b]efore MMS will issue a new lease or approve the assignment of an existing lease," it also suggests at 30 C.F.R. § 256.53 that increasing the lease bond to $500,000, also for the purpose of guaranteeing "compliance with all the terms and conditions of the lease" is a condition precedent for approval of a proposed Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) or assignment of a lease with an approved DPP or DOCD. Appellant points out that application of the $500,000 bond requirement of 30 C.F.R. § 256.53 to a long-time lessee/operator imposes a retroactive duty that was not clearly articulated in the Notice of Proposed Rulemaking of December 8, 1995. (SOR at 4-6.)

Appellant cites 30 C.F.R. § 256.53(e) and (f)(i)(2) to argue that increasing the lease bond to $500,000 is discretionary, provided the Regional Director is persuaded that a lessee's "* * * royalties due the Government and the estimated costs of lease abandonment and cleanup are less than the required bond amount." Appellant also argues that the MMS demand for an additional bond in the amount of $500,000, pursuant to 30 C.F.R. § 256.53 (b)(1)(i)(C) (1997), unnecessarily duplicates alternative security instruments previously approved by MMS pursuant to regulations in effect in 1991, when appellant was approved as a successor operator of lease OCS P-0166, and thus does not apply to appellant's situation. Further, appellant argues, MMS abused its discretion by not allowing appellant's existing security instruments, a $50,000 lease bond that "guarantees compliance with all the terms and conditions of the lease" (30 C.F.R. § 256.52(a)(1)) and a $9.2 million Letter of Credit guaranteeing lease abandonment costs, to satisfy the additional bonding requirements of the regulation. Appellant submits evidence to demonstrate that the $9.2 million Letter of Credit secures estimated anticipated abandonment costs of $7,636,963 (minus salvage value estimated at approximately $3,000,000) (SOR at 6) and argues that the only other lease obligations to be secured by the $50,000 lease bond are the lessee's failure to pay royalty and pollution obligations. (SOR at 7.) Appellant asserts that "the existing $50,000 bond is conservatively five and one-half to six and one-half times Appellant's monthly royalty obligation" of $7,400 to $9,000 per month and concludes that it is "a substantial over-security." (SOR at 7.)

MMS has filed an Answer in which it asserts that the regulatory requirement to post a $500,000 bond that guarantees compliance with all the terms and conditions of the lease is a condition imposed upon all

leases for which a DPP or a DOCD has been approved. Additionally, MMS argues that while appellant's costs of abandoning its lease are secured by a $9.2 million Letter of Credit, that security covers only the abandonment costs such as removing platforms and plugging wells. The function of the $500,000 bond, on the other hand, is to "guarantee compliance with all the terms and conditions of the lease." See 30 C.F.R. § 256.53(b)(1)(i). MMS asserts that the regulation at 30 C.F.R. § 256.52(a)(3) provides that a lessee's $50,000 bond would be replaced by the $500,000 bond, for a total increase in bonding of $450,000.

The record shows that Pacific Operators is a corporate affiliate of Signal Hill Service, Inc. (Signal Hill), a privately-owned independent oil company and the lessee of record. Effective February 19, 1991, appellant Pacific Operators succeeded Phillips Petroleum Company as operator of two oil production platforms located in Federal waters in the Santa Barbara Channel, California, on MMS lease OCS P-0166. 1/ The record further shows that lease OCS P-0166 was purchased on January 1, 1967, and operated by Phillips Petroleum Company, until its assignment to Signal Hill. Lease OCS P-0166 covers all portions of Block 52N 63W and of the N1/2 of Block 51N 63W "lying seaward of a line three geographical miles distant from the coastline of California (as said coastline is defined in the Submerged Lands Act of 1953) containing 1995.48 acres, more or less, as shown on Official Leasing Map, California Map No. 6B, Channel Islands Area." (Schedule A, Description of Lease on the Outer Continental Shelf, OUTER CONTINENTAL SHELF MINERAL LESSEE'S AND OPERATOR'S BOND ($50,000), Form MMS-2042 (November 1986).)

Before receiving approval of the assignment from the MMS Regional Director in February 1991, Signal Hill was required to post security to guarantee the performance of all lessee obligations that might arise under the subject lease. Pursuant to the regulation at 30 C.F.R. § 256.58(a) (1990), Signal Hill, as lessee, posted a Mineral Lessee's and Operator Bond in the face amount of $50,000 and, as a further condition of MMS approval of the assignment, Phillips Petroleum Company (Seller-Assignor) and Signal Hill (Buyer-Assignee) agreed to establish an Abandonment Escrow Account, funded from oil production revenue, with a "target balance" equal to the abandonment cost, plus 25 percent. The Appendix memorializing the creation of the Abandonment Escrow Account and specifying its terms was approved by the Regional Director, Pacific OCS Region, MMS, on February 5, 1991.

The initial amount of the Target Balance was $17.56 million, with the requirement that every 2 years from the time of the approval of the assignment, the Escrow Agent "will commission a third-party estimate of abandonment costs by a qualified engineering consulting firm." (Appendix

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1/ Prior to assignment to Signal Hill Service, Inc., Phillips Petroleum owned a 25-percent share of OCS Oil and Gas lease OCS P-0166, while OXY, USA Inc. owned a 37.50-percent share, Santa Fe Energy Resources, Inc. owned a 33.75-percent share, and Maersk Energy Incorporated owned a 3.75-percent share. See Decision, dated Feb. 8, 1991, approving assignments.

to Assignment of OCS P-0166 From Phillips Petroleum Company (Seller) to Signal Hill Service, Inc. (Buyer) (Appendix) at 1.) Pursuant to the biennial engineering report, the Target Balance would be adjusted to the new estimate of abandonment costs, plus 25 percent.

The Appendix creating the Abandonment Escrow Account further stipulated that the Target Balance would not, prior to commencement of abandonment activities, be adjusted below $9,200,000 "plus estimated requirements to abandon the pipeline and onshore facilities," without the consent of MMS. (Appendix at 1.) The agreement further states that once abandonment activities are begun, the Target Balance would be reduced by the amount actually spent on abandonment services and that funds in the Escrow Account would be disbursed to the Buyer, Signal Hill Service, Inc., to pay costs of Abandonment Services, taxes on income on interest from escrowed monies, or tax insufficiencies. The Agreement further describes Abandonment Services as:

> Any activity necessary to comply with laws, regulations and leasehold requirements related to the abandonment of wells, platforms, pipelines and onshore facilities, including but not limited to permitting, required studies, plugging of wells, removal of platforms, and removal and restoration of onshore facilities.

(Appendix at 1.)

The parties agreed to designate an "Abandonment Agent," who, "in the event the Buyer defaults on the abandonment obligations * * * will receive funds from the Escrow Account and serve as prime contractor for abandonment." (Appendix at 1.) The agreement further specifies that "Buyer will be entitled to any funds remaining in the Escrow Account after all abandonment obligations are completed in accordance with MMS or other government agency regulations" and "[t]he Escrow Agent will provide an annual statement showing the current Target Balance and certify that the Escrow Account is fully funded or disclose the amount of the shortfall." (Appendix at 2.)

The agreement memorialized in the Appendix further provides that Pacific Offshore "will provide abandonment performance security for offshore well abandonment and platform removal services in the form of a bank Letter of Credit in the amount of $9,200,000 in favor of Seller [Phillips Petroleum]." (Appendix at 2.) The agreement further specifies that the Letter of Credit will remain in force until the Escrow Account balance totals at least $9,200,000 in addition to estimated required costs to abandon the pipeline and offshore facilities. (Appendix at 2.)

By letter dated July 31, 1997, the Regional Director, MMS Pacific OCS Region, transmitted a copy of the Amended Final Rule entitled "Surety Bonds for Outer Continental Shelf Leases," published in the Federal Register of May 22, 1997, to all Pacific OCS leaseholders and operators. In a letter dated August 28, 1997, the Regional Director transmitted a copy of the

Amended Final Rule to the President, Pacific Operators Offshore, Inc., and stated that the minimum new bond requirement for lease No. OCS P-0166 was $500,000. The Regional Director requested that Pacific Operators meet the new bonding level for the lease before December 8, 1997, and further advised that Pacific Operators could "satisfy the bond requirement by providing a new bond or by increasing the amount of your existing $50,000.00 bond." (Letter of August 28, 1997, at 1.)

MMS responded by letter dated October 3, 1997, to Pacific Operators' telephone inquiry of September 10, 1997, questioning language in 30 C.F.R. § 256.53(b) (1997), which appeared to make the posting of the $500,000 bond a prerequisite to a MMS grant of permission to carry out lease development and production activities. Pacific Operators pointed out that it had been carrying out development and production activities since 1967.

In its October 3, 1997, letter to Pacific Operators, MMS quotes an unnamed person in the Solicitor's office as interpreting lessees' bonding obligations as defined by the regulations as follows:

> The higher bond levels were contained in a rule published on August 27, 1993. Anyone who obtained a lease or had a plan approved after that date should already be in compliance with the new bond levels. Paragraphs 256.53(a)(1)(i)(C) and (b)(1)(i)(C) require that anyone not currently in compliance with new levels needs to come into compliance by December 8, 1997. The December 8, 1997 date is two years from publication of the proposed rule and is specifically written into the final rule. Having everyone in compliance by that December 8, 1997 date is a stated purpose of the May 22, 1997 rule.

(Letter dated October 3, 1997, from J. Lisle Reed, Regional Director, MMS Pacific Region, to Steven F. Coombs, Pacific Operators, at 1.)

MMS also quoted the bonding provision found in lease instrument OCS P-0166:

> Bonds. [Lessee agrees] to maintain at all times the bond required prior to the issuance of this lease and to furnish such additional security as may be required by the Lessor if, after operations or production have begun, the Lessor deems such additional security to be necessary.

(Letter of October 3, 1997, at 1. See also United States Department of the Interior, Bureau of Land Management, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act, Form 3380-1, (February 1966), Section 2(b).)

MMS further informed Pacific Operators in the letter of October 3, 1997, that it could request a reduced amount of bonding

> if you can demonstrate to the satisfaction of the Regional Director that 1) the liabilities associated with this lease are

> less than $500,000.00 [per previous 30 C.F.R. § 256.61(c) and new 30 C.F.R. § 256.53(c)], or 2) the securities and alternate securities that you have pledged adequately cover all or part of the lease obligations including civil penalties, royalty obligations, plugging all wells, platform abandonment and site clearance [per 30 C.F.R. § 256.52(g)].

(Letter of October 3, 2000, at 1.)

Additionally, MMS asked Pacific Operators to supply "a copy of your current annual escrow statement and a third party estimate of abandonment costs by October 31, 1997." (Letter of October 3, 1997, at 1.)

By letter dated November 18, 1997, Pacific Operators explained that as a privately held independent company it was unable to take advantage of the lower rates for corporate bonds available to publicly held companies and would suffer considerable financial hardship if required to increase its bonding requirement to $500,000. Thus, Pacific Operators asserted, while publicly held companies might pay $15,000 for a $500,000 bond, a privately held independent company would be required to set aside the full face amount of the bond in a segregated account for the benefit of the issuing surety company and thus encumber $515,000 for the $500,000 bond. (Letter of November 18, 1997, at 1.)

Pacific Operators acknowledged MMS' discretionary authority as defined at section 2(b) in lease instrument OCS P-0166 to require additional security as may be deemed necessary after operations or production had begun. Pacific Operators then offered the following reasons why it should not be required to submit an additional $450,000 bond:

> 1. The main MMS risk that the subject bond attempts to protect is the risk of well and facilities abandonment. In our case, we submit that no such risk exists because of the existing $9.2MM bank Irrevocable Letter of Credit that we have already posted in your favor. As you know, we originally posted that L/C for the express purpose of protecting the Agency against just such abandonment risks. Within the next week, we expect to have in your hands an up-dated engineering report * * * detailing the projected costs of abandonment of our facilities. As we advised your staff today, we have learned that the conclusions of that report will again confirm that the total of those costs are considerably less than the amount of our current L/C.
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> 2. The secondary risk to be protected by the subject bonding is the potential for default in our royalty obligations to you. In that regard, we submit that the following two factors should be accorded paramount importance in your evaluation of the amount of security you need in order to be protected:

> a. Our royalty payment history. Throughout the entire time we have operated lease OCS P-0166 we have never been in default. We have always taken our royalty obligation to you very seriously and we trust that we have never given you reason to fear that our attitude will change in that regard.
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> b. Existing security. Over the past 12 month period, our average monthly royalty obligation to the MMS has been approximately $52,000. We presently maintain posted a general obligation bond in your favor totalling $50,000. Thus, we respectfully suggest that you again are sufficiently secured. [2/]

(Letter of November 18, 1997, at 2.)

Pacific Operators stated that "[i]n view of the [matters discussed] above, we respectfully submit that the realistic general obligation risks which our operation now poses to the Agency are presently being met by the levels of security currently in place." (Letter of November 18, 1997, at 3.) Pacific Operators also stated that if its royalty obligation to MMS increased, it "would be perfectly appropriate to review with you the question of posting a higher general obligation bond to protect the royalty risks we both can then identify." (Letter of November 18, 1997, at 3.)

By letter dated November 26, 1997, Pacific Operators forwarded a final draft of an engineering report specifying the projected abandonment costs for its facilities. According to appellant,

> the aggregate projected costs for abandoning our wells and facilities is $6,961,110. With a 25% contingency pad, that estimate expands to $8,701,387. At the same time, of course, the projected net abandonment exposure, after salvage, is only $5,637,013. From any point of view, therefore, you will appreciate our reasons for urging that all conceivable abandonment liability for our platforms and facilities already is amply secured by the $9.2MM irrevocable bank Letter of Credit which costs us dearly to keep in place.

(Letter of November 26, 1997, at 1.)

By letter dated December 8, 1997, and addressed to Charles Cappel, Director, Pacific Operators, the Regional Director, MMS, stated that the agency had reviewed Pacific Operators' request for a primary bond of less

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2/ Appellant's SOR states that its monthly royalty obligation averages $7,400 to $9,000. See SOR at 7. The discrepancy between the amounts identified as monthly royalty obligations is not explained.

than $500,000 and had found the request to be consistent with the regulation at 30 C.F.R. § 256.53(c). The Regional Director stated that MMS would grant Pacific Operators' request for a primary bond level of $50,000, provided Pacific Operators complied with the following provisions:

> (1) [that] you provide MMS a copy of the final report Re-Calculation of Removal Costs for Hogan and Houchin Platforms prepared by [Pacific Operators' decommissioning expert consultant] of the estimate of abandonment and site clearance costs * * * which must demonstrate that the abandonment and site clearance liabilities are less than or equal to the amount of your existing abandonment and site clearance letter of credit, (2) a notarized or corporate sealed statement from your surety, stating the requirement to fully fund your primary bond, and (3) MMS' review of the final report Re-Calculation of Removal Costs for Hogan and Houchin Platforms finds the information provided to be technically acceptable.

(Letter of December 8, 1997, at 1.)

The Regional Director's letter continues: "The level of the primary bond reflects current general obligations associated with lease OCS P-0166. To the extent Pacific Operators, Inc. pursues redevelopment of lease OCS P-0166 additional bonding may be required to meet additional abandonment and site clearance obligations and increased general obligations on the lease." (Letter of December 8, 1997.)

The Regional Director further stated that the MMS deadline for receiving the requested submissions was January 15, 1998, and "[b]y establishing the January 15, 1998 deadline for compliance with the terms of this letter, MMS is waiving the December 8, 1997 deadline for complying with the bond requirements contained in CFR 256.53. Failure to meet the requirements identified above will result in default and MMS may require you to post security in the amount of $500,000." (Letter of December 8, 1997.)

The record shows that on January 20, 1998, President and Chief Executive Officer Richard I. Carone of Pacific Operators sent a copy, by facsimile, of the decommissioning consultant's final report to Fred White of MMS with the following message: "Fred, I apologize for not getting this over to you. It's been on my desk (buried) since early December. Hard copy is being sent Federal Express."

The record also contains a 3-page facsimile transmission, dated January 23, 1998, from Mr. Carone, to Mr. White, which includes a cover sheet, a letter from Mr. Carone to J. Lisle Reed, Regional Director, MMS, and a certification from a California notary public, dated January 15, 1998. Mr. Carone's letter to Mr. Reed states:

> In reference to your request of December 8th, this letter thereby confirms that in order for our company to post

> any increase in our primary Bond, we must deposit, in a Bank account collateralized to the benefit of the surety, an amount of cash equal to the amount of such an increase.

(Facsimile letter of January 23, 1998.)

The Notary Public's Acknowledgement, attached to Mr. Carone's letter to Mr. Reed, states that "R.L. Carone, proved to me on the basis of satisfactory evidence to be the person whose name is subscribe[d] to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that, by his signature on the instrument, the entity upon behalf of which he acted executed the instrument." (Acknowledgement at 1.)

By Decision dated February 11, 1998, the Regional Director denied Pacific Offshore's request for a waiver of 30 C.F.R. § 256.53(b), "because the information provided in support of your request demonstrated abandonment and site clearance liabilities for lease OCS P-0166 are greater than $500,000. Please see 30 CFR 256.53(c), for information on the provisions for a reduced primary bond." (Letter of February 11, 1998, at 1.)

The Regional Director's Decision asserts that

> POOI [Pacific Operators], Signal Hill, or a third party must provide MMS with a bond of $500,000 in accordance with 30 CFR 256.53(d). This bond coverage maybe [sic] in the form of a rider to your existing bond, a new $500,000 bond, or a separate $450,000 bond. MMS must receive the bond in a form consistent with the requirements of 30 CFR 256.54 no later than 60 days from receipt of this letter.

(Letter of February 11, 1998, at 1.)

The record includes a memorandum, dated April 8, 1998, from the Team Leader, Financial Responsibility Team, to the Regional Director, Pacific OCS Region, summarizing the analysis and options considered in the MMS decision of February 11, 1998. The memorandum identifies several site clearance and abandonment estimated costs which were not listed by Pacific Operators' decommissioning consultant's report, including an estimated $1,000,000 for complying with Federal environmental costs and requirements, an estimated $1,000,000 for mobilization/demobilization (mob/demob), an estimated $750,000 for site clearance, and an estimated $150,000 for materials, fabrication, and subcontracts. Additionally, MMS estimated an additional $1,800,000 for partial abandonment of three pipelines not included in the Pacific Operators' decommissioning report and an additional $1,367,000 in plugging and abandonment costs. MMS estimated $450,000 in costs associated with contingencies and weather, while Pacific Operators' decommissioning expert's report estimated $1,740,280 for costs associated with contingencies and weather. In total, MMS estimated that site clearance and abandonment costs for lease OCS P-0166 were $13,478,000,

while Pacific Operators' decommissioning Expert estimated a total of $8,701,387. 3/ The MMS analysis thus concluded that Pacific Operators had failed to address a variety of cost items, which, if considered, would result in decommissioning obligations surpassing the funds set aside by its Letter of Credit.

The Memorandum of April 8, 1998, proposed four options based on an analysis of Pacific Operators' request to maintain its general OCS Lessee/Operator bond at $50,000. Option 1 would deny Pacific Operators' request for a waiver and require it to post $500,000 general bond with no change in its supplemental bond. Option 2 would deny Pacific Operators' request for a waiver and require it to post a $500,000 general bond and increase the amount of its supplemental bond. Option 3 would grant Pacific Operators' request for a waiver and require it to increase its supplemental bond. Option 4 would grant Pacific Operators' request for a waiver.

The Team Leader's memorandum recommends that the Regional Director adopt Option 2 because it "requires [Pacific Operators] to comply with the provisions of the MMS regulations and policies associated with site clearance and abandonment [and] attempts to address our goal of protecting the public from absorbing abandonment costs." (Memorandum of April 8, 1998, at 2.)

The MMS Decision of February 11, 1998, adopts Option 2 above. On March 10, 1998, Pacific Operators filed a Notice of Appeal of the Regional Director's February 11, 1998, Decision, and a Request for Oral Argument. On March 27 and 28, 1998, Pacific Operators filed a request for stay pending the Director's determination of its appeal. By letter dated April 8, 1998, the Regional Director granted Pacific Operators a temporary stay of the February 11, 1998, Decision "to allow time for our MMS Appeals Division to make a determination on a stay pending the decision in your appeal. If you do not get a response from the MMS Division by May 29, 1998 your stay is granted pending the decision on your appeal." (Letter of April 8, 1998, at 1.)

By Decision dated July 16, 1998, the Associate Director for Policy and Management Improvement, MMS denied Pacific Operators' appeal, and an appeal therefrom to this Board was duly filed.

[1] We turn first to an examination of relevant MMS surety bond coverage provisions for leasing oil and gas and sulphur in the Outer Continental Shelf. As the record shows, at the time of the assignment of the lease, appellant's corporate affiliate pledged to provide abandonment performance security, in the form of a $9.2 million Letter of Credit, for off shore well abandonment and platform removal services. Additionally, on

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3/ Pacific Operators' subtracted an estimated $564,375 in revenue from the sale of scrap material and an estimated $2,500,000 from the sale of on-shore facilities. The MMS estimates did not include deductions for these items.

February 14, 1991, appellant posted a lessee's and operator's bond in the amount of $50,000 and became the operator of two oil production platforms located in Federal waters in the Santa Barbara Channel on MMS lease OCS P-0166. Appellant's bonding requirements were subject to the regulations at 30 C.F.R. Part 256--OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL, Subpart I--Bonding, §§ 256.58, 256.59, and 256.61 (1990).

On August 27, 1993, MMS published in the Federal Register a Final Rule, effective November 26, 1993, amending the surety bond provisions at 30 C.F.R. Part 256. MMS stated that the objective of the rulemaking was "to identify the appropriate level(s) of bond coverage required of OCS lessees." Supplementary Information, 58 Fed. Reg. 45256 (1993). The Final Rule retained an earlier provision requiring that, before a lease could issue, a successful bidder must submit an individual surety bond in the amount of $50,000 "conditioned on compliance with all the terms and conditions of the lease." 30 C.F.R. § 256.58 (1990 and 1991). The 1993 Final Rule also required that for leases at the development and production stage, or for development leases for which the record title was to be assigned, the lessee submit a $500,000 lease bond, unless the lessee already maintained or furnished an areawide bond in the amount "of $3 million * * * conditioned upon compliance with all the terms and conditions of oil and gas and sulphur leases held by the lessee on the OCS for the area in which the lease is situated." 30 C.F.R. § 256.61(b)(1) and (b)(2) (1993).

The 1993 Final Rule also provided that if a lessee could demonstrate to the satisfaction of MMS that its

> wells and platforms [could] be abandoned and removed and the drilling and platform sites cleared of obstructions for less than the amount of lease bond converge required under paragraph (b)(1) * * * [MMS] may accept a lease surety bond in an amount less that the prescribed amount but not less than the amount of the cost for well abandonment, platform removal, and site clearance.

30 C.F.R. § 256.61(c) (1993). Moreover, the regulation permitted an increase in the security required in §§ 256.58(a) and 256.61(a),(b) and (c) if, pursuant to an analysis of lessee's financial strength and business stability, MMS determined that such an action was necessary to cover royalty due or regulatory compliance. 30 C.F.R. § 256.61(d) (1993).

In Supplementary Information provided at the time of the publication of the Final Rule in 1993, MMS, in response to a Comment offered by a respondent, stated: "A separate rulemaking is being initiated which would establish a deadline for the posting of supplemental bonds for leases which have experienced exploration or development and production activities under [Exploration Plans, DOCD, or DPP's] approved prior to the effective date of this rule. These leases, of course, remain subject to the supplemental bonding rule at 30 CFR 256.61." 58 Fed. Reg. 45258 (Aug. 27, 1993).

On December 8, 1995, MMS published a Notice of Proposed Rulemaking, affecting the regulations at 30 C.F.R. Parts 250, 251, and 256, and entitled "Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases." 60 Fed. Reg. 63011. MMS therein stated the purpose of the proposed rule, in pertinent part, as follows:

> [to] establish a deadline of 2 years for all Outer Continental Shelf (OCS) oil and gas and sulphur lessees to bring their bond coverage into compliance with the new levels of coverage established in 1993; [to] clarify MMS's position that assignees, assignors, and co-lessees are jointly and severally liable for compliance with OCS oil and gas and sulphur leases; [to] establish a regulatory framework for lease-specific abandonment accounts and acceptance of a third-party guarantee * * *. These changes are needed to reduce the risk of default by an underfunded company operating a lease or holding a right-of-way.

Id.

The proposed revision to 30 C.F.R. § 256.53 (b)(1) in the December 8, 1995, Notice of Proposed Rulemaking reads:

> (b) Operations under a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD).
>
> (1) When submitting a proposed DPP and DOCD, when submitting a proposed DPP or DOCD, when submitting a proposed assignment of a lease with an approved DPP or DOCD, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a $500,000 surety issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease [sic] shall be furnished to the Regional Director. * * * The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage provided under paragraph (a) of this section.

60 Fed. Reg. 63016.

The regulation at 30 C.F.R. § 256.55, as proposed in the December 8, 1995, Notice of Proposed Rulemaking, is entitled "General terms and conditions of bond," and reads in pertinent part as follows:

> (a) The Regional Director shall determine the amount of the lease bond as provided in §§ 256.52 and 256.53 of this part.
>
> (b) A lease bond must be payable to MMS.

(c) A lease bond shall be conditioned upon compliance with all the terms and conditions of the lease and governing regulations.

Id.

The first sentence of the Summary Statement for the Final Rule, entitled "Surety Bonds for Outer Continental Shelf Leases," published May 22, 1997, at 62 Fed. Reg. 27948, reads: "This rule amends the surety bond provisions of Minerals Management Service (MMS) regulations to establish December 8, 1997, as the deadline for Outer Continental Shelf (OCS) oil and gas and sulphur lessees to comply with new levels of bond coverage established in 1993." In the section-by-section analysis provided in the Supplementary Information preceding the statement of the Rule, Section 256.53, identified as "additional bonds," reads in pertinent part as follows:

We have revised the proposed text of § 256.53 (formerly § 256.61) to present the requirements of the provision in plain English.

We had proposed to require all OCS lessees to come into compliance with the levels of bond coverage established in the 1993 rule for new actions within 2 years of the final rule. This rule establishes December 8, 1997, as the deadline for each OCS lessee to comply with the lease bond coverage required at the development state of its lease. A full year has already lapsed, and MMS has concluded that all lessees should be able to come into compliance by that date which is 2 years from publication of the proposed rule and 4 years after these levels of coverage became effective for new approvals.

62 Fed. Reg. 27951.

An accompanying chart shows that at lease issuance a $50,000 bond is required of lessees, and lessees with DPP and DOCD approval are required to post a bond of $500,000.

The regulation at 30 C.F.R. § 256.53 states as follows:

(b) This paragraph explains what bonds you (the lessee) must provide before lease development and production activities commence:

(1)(i) You must furnish the Regional Director a $500,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed Development and Production Plan (DDP) or Development Operations Coordination Document (DOCD) for approval;

(B) The date you submit a request for approval of the assignment of a lease on which a DPP or DOCD has been approved; or

(C) December 8, 1997, for any leases for which a DPP or DOCD has been approved.

As approved operator of lease OCS P-0166 since 1991, Appellant was on notice that it was bound by the terms of 30 C.F.R. § 256.53(b)(1)(C).

In summary, in our review of the Final Rule, "Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS)," 58 Fed. Reg. 45255-45262 (Aug. 27, 1993), the Notice of Proposed Rulemaking, "Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases," 60 Fed. Reg. 63011-63019 (Dec. 6, 1995), and the Final Rule, "Surety Bonds for Outer Continental Shelf Leases," 62 Fed. Reg. 27948-27960 (May 22, 1997), we find no merit in Appellant's claim that the Final Rule of May 22, 1997, is ambiguous or fails to give notice of its obligation to post a $500,000 bond guaranteeing compliance with all the terms and conditions of lease OCS P-0166. It is well-settled that one who deals with the Government is presumed to know the relevant statutes and duly promulgated regulations. See Lanny Perry, 131 IBLA 1, 4 (1994), and cases cited.

[2] When a determination is left to the discretion of an agency, the general rule is that a decision made by an agency in the exercise of its discretion should be upheld unless it is arbitrary and capricious. The Administrative Procedure Act provides that courts must set aside those actions of an agency found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Therefore, an agency must provide a reasonable explanation for its decision and it must demonstrate that a rational connection exists between its findings and the choice it makes. Motor Vehicle Manufacturers Association v. State Farm Mutual, 463 U.S. 29, 43 (1983). Moreover, when an agency changes a policy or a procedure, it must provide a reasoned analysis supporting this change in the record. Id.

The record in the instant case demonstrates that MMS gave ample and consistent notice of its intent to increase bonding requirements for all OCS lessees. The public was made aware of MMS' intent to require higher surety bonds from all lessees in the Final Rule published in 1993. In the Notice of Proposed Rulemaking of 1995, MMS specified how this increase would be applied and what proofs were necessary for exceptions to the application. In the May 27, 1997, Final Rule, December 8, 1997, was specified as the date when all lessees were required to be in compliance with the higher bonding requirement.

The record also shows that MMS granted appellant a temporary waiver of the increased bonding requirement so that it might proffer information that might have qualified it for an exception to the application of the regulation. When MMS received appellant's information, it analyzed it and provided, in the record, a reasoned explanation of its decision to deny appellant's request for a waiver of the requirement to post a $500,000 surety bond.

We find, therefore, no reason to disturb the MMS decision appealed from. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

_____
John H. Kelly
Acting Chief Administrative Judge